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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/600,591 | 06/23/2003 | Carsten Jensen | Q76205 | 5506 |

23373 7590 01/12/2005
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| EXAMINER |
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PRICE, RICHARD THOMAS JR

| ART UNIT | PAPER NUMBER |
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3643

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/600,591

Applicant(s)

JENSEN ET AL.

Examiner

Thomas Price

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11-01-2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Information Disclosure Statement

The Information Disclosure Statements received on 11-26-2003 and 09-10-2003 have been considered and initialed by the Examiner. A copy of the disclosure statements are attached herewith.

Claim Rejections - 35 USC § 112

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 5, "the pipes" lacks prior antecedent basis in the claim. In claim 5, lines 2 and 3, the phrase "guiding means a separation device for separating heart and lungs" is unclear as to its meaning. In claim 7, lines 4, 6 and 7, the terms "preferably", "preferred", "preferably" and "preferred" are indefinite as to their meaning and should be deleted from the claims because of their indefiniteness. See also claim 17, lines 3 and 4, the terms "preferably" and "preferred".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7 and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,638,155.

Jensen et al teach an apparatus for and a method of separating an organ from a set of organs from a carcass. The intended use “for automatic cutting of organs from a plucks set from a carcass” cannot patentably distinguish the claimed invention, in that, it has been held that the recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Jensen et al teach a means for cutting (31/32), suspension means 4 for holding the pipes, means for moving (chain running in rail 1), and a guiding means (12, 13, 27). The running chain (unnumbered) is considered to be a moving means.

Regarding claim 2, the guiding means (12) is divided in two parts having an upper side and a slit (13) between the two parts having such a width that the connective tissue extends through the slit, and the remaining organs do not pass through the slit.

As for claim 3, the surfaces provide a force to cause the pair of organs to move outwards however slightly away from the slit.

Regarding claim 4, Jensen et al teach two(2) cutting devices, one cutting device is situated under the slit and equally positioned about the slit such that it broadly reads on the claimed “on either side of the slit between the two parts of the guiding means”. Further, because the “upper side” is not clearly defined, then the second cutting device situated at a higher elevation can be construed to be positioned “at the upper side”. A third cutting device 22 is provided at the slit below or above the slit.

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In regards to claims 5 and 6, a separation device (14) for separating organs from one another is a flat engagement means extending upwards.

As for claim 7, the engagement means includes a first position standing up relative to horizontal (14), and a second position (unnumbered) under an angle of 0-30 degrees.

Regarding claim 15, the suspension members (1) of Jensen et al extends through the entire apparatus.

In regards to claim 16, a bracket plate 3 is considered to be a pusher adapted for movement along the suspension member.

As for claim 17, the bracket plates are positioned in a spaced arrangement with one another is considered a buffer device.

Allowable Subject Matter

Claims 8-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

Summary: Claims 1-17 are rejected.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Price whose telephone number is 703-308-2694. The examiner can normally be reached on Monday through Friday from 8:30a.m. to 5:00p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas Price
Primary Examiner GAU: 3643

rtp